

# EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

## PROJECT TITLE:

An Ordinance regarding deferred payment of impact fees for single-family homes and an exemption for payment of impact fees for low-income housing, amending Ordinance 3389-14 (EMC Chapter 18.36, Small Project Impact Fee), Ordinance 3387-14 (EMC Chapter 18.40, Transportation Mitigation) and Ordinance 3396-14 (EMC Chapter 18.44, School District Impact Fees) as amended

<u>7-13-16</u>	Briefing
<u>          </u>	Proposed Action
<u>          </u>	Consent
<u>          </u>	Action
<u>7-13-16</u>	First Reading
<u>7-20-16</u>	Second Reading
<u>7-27-16</u>	Third Reading
<u>          </u>	Public Hearing
<u>          </u>	Budget
<u>          </u>	Advisory

COUNCIL BILL #	<u>CB1607-29</u>
Originating Department	<u>Planning</u>
Contact Person	<u>David Stalheim</u>
Phone Number	<u>425-257-8731</u>
FOR AGENDA OF	<u>July 13, 2016</u>
	<u>July 20, 2016</u>
	<u>July 27, 2016</u>
Initialed by:	
Department Head	<u>ds</u>
CAA	
Council President	

<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
		Ordinance, Planning Commission Staff Report, Public Comment	Legal, Planning

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

## DETAILED SUMMARY STATEMENT:

This is an ordinance to amend the following chapters of the Everett Municipal Code:

- Chapter 18.36, Small Project Impact Fee
- Chapter 18.40, Transportation Mitigation
- Chapter 18.44, School District Impact Fees

The amendments would address requirements set forth by the 2015 state legislature in ESB 5923 regarding the establishment of a fee deferral system for new single-family detached and attached residential construction.

The amendments also provide an option to exempt up to 80% of impact fees for low-income housing.

## RECOMMENDATION (Exact action requested of Council):

Adopt an Ordinance regarding deferred payment of impact fees for single-family homes and an exemption for payment of impact fees for low-income housing, amending Ordinance 3389-14 (EMC Chapter 18.36, Small Project Impact Fee), Ordinance 3387-14 (EMC Chapter 18.40, Transportation Mitigation) and Ordinance 3396-14 (EMC Chapter 18.44, School District Impact Fees) as amended.



ORDINANCE NO. \_\_\_\_\_

**An Ordinance regarding deferred payment of impact fees for single-family homes and an exemption for payment of impact fees for low-income housing, amending Ordinance 3389-14 (EMC Chapter 18.36, Small Project Impact Fee), Ordinance 3387-14 (EMC Chapter 18.40, Transportation Mitigation) and Ordinance 3396-14 (EMC Chapter 18.44, School District Impact Fees, as amended**

WHEREAS, Chapter 82.02.050 RCW requires the city to adopt and maintain a system for the deferred collection of impact fees for single-family detached and attached residential construction by September 1, 2016; and

WHEREAS, Chapter 82.02.060 RCW authorizes the city to provide an exemption of not more than eighty percent of impact fees for low-income housing with no explicit requirement to pay the exempted portion of the fee from public funds; and

WHEREAS, the Planning Commission of the City of Everett has reviewed the proposed amendments to Chapter 18.36, Small Project Impact Fee, Chapter 18.40, Transportation Mitigation and Chapter 18.44, School District Impact Fees and found that:

1. RCW 82.02.050(3) requires the city to include one of three options for when payment would be due: final inspection; issuance of the certificate of occupancy or equivalent certification; and/or the closing of the first sale of the property; and
2. RCW 82.02.060(3) authorizes the city to provide an exemption for not more than eighty percent of impact fees for low-income housing if it is conditioned to require the developer to record a covenant that prohibits use of the property for any purpose other than for low-income housing; and
3. RCW 82.02.060(3) requires that any school district that receives school impact fees must approve any exemption; and

WHEREAS, the City Council finds that:

1. The proposed ordinance provides one of the three options for impact fee deferral required by RCW 82.02.050; and
2. The proposed ordinance requires the recording of covenants for any impact fee exemption approved for low-income housing and requires school district approval as a condition of city approval of any school district impact fee exemption.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:



**Section 1.** Section 1 of Ordinance No. 3389-14, as amended (EMC 18.36.010), regarding "Title, authority and purpose" for Small Project Impact Fees, which reads as follows:

A. Title. The ordinance codified in this chapter may be referred to or cited as the small project impact fee ordinance, or "SPIFO," and will be referred to herein as "this chapter."

B. Purpose and Authorization. The purpose of this chapter is to implement the city's comprehensive plan including its transportation and capital facility elements. This chapter enables the city to collect impact fees from proposed projects that generate additional traffic and are categorically exempt under the State Environmental Policy Act (SEPA) and the state rules adopted thereunder (WAC 197-11-305) and therefore not subject to the city's transportation mitigation ordinance (TMO) (Chapter 18.40). The fees adopted under this chapter are authorized by and in accordance with the provisions of RCW 82.02.050 through 82.02.090.

**Is hereby amended to read as follows:**

A. Title. The ordinance codified in this chapter may be referred to or cited as the small project impact fee ordinance, or "SPIFO," and will be referred to herein as "this chapter."

B. Purpose and Authorization. The purpose of this chapter is to implement the city's comprehensive plan including its transportation and capital facility elements. This chapter enables the city to collect impact fees from proposed projects that generate additional traffic and are ~~categorically exempt under the State Environmental Policy Act (SEPA) and the state rules adopted thereunder (WAC 197-11-305) and therefore~~ not subject to the city's transportation mitigation ordinance (TMO) (Chapter 18.40). The fees adopted under this chapter are authorized by and in accordance with the provisions of RCW 82.02.050 through 82.02.090.

**Section 2.** Section 6 of Ordinance No. 3389-14, as amended (EMC 18.36.060), regarding "Administrative procedures and appeals" for Small Project Impact Fees, which reads as follows:

A. RCW 82.02.070 and 82.02.080 are hereby adopted by reference into this chapter as the administrative procedures for collection and refunding of impact fees under this chapter.

B. Payment of all fees shall be made prior to:

1. Final plat approval in the case of subdivisions and short subdivisions; or
2. In all other cases, be prior to the issuance of any building permits.

C. All fees collected under this chapter shall be obligated or expended on public facilities that are addressed by an adopted capital facilities plan element of a comprehensive land use plan. If fees are earmarked for a specific project, and the city determines that it is not feasible to implement that project within six years (or such other time period established pursuant to RCW 82.02.070(3) on public facilities intended to benefit the development activity for which the impact fees were paid), the fees may be expended or encumbered on a replacement project that provides similar or greater improvement to the transportation system.

D. The city engineer or designee shall be the official responsible for preparing the annual reports required under RCW 82.02.070.

E. An applicant's commitment to specific performance to construct a transportation improvement, including any bonds or financial assurance associated with the improvement, shall not be considered a fee under this chapter, regardless of whether a monetary value has been



assigned to the improvement in the traffic analysis or other project review documents or agreements.

F. An applicant may appeal the city traffic engineer's determination of the impact fee required under this chapter by following the administrative appeal procedures for the underlying development approval. If there are no administrative appeal procedures for the underlying development approval, the appeal shall follow the administrative appeal procedures in Section 15.20.010 for the appeal of minor administration decisions.

**Is hereby amended to read as follows:**

A. RCW 82.02.070 and 82.02.080 are hereby adopted by reference into this chapter as the administrative procedures for collection and refunding of impact fees under this chapter.

B. Payment of all transportation impact fees shall be made prior to building permit issuance, except as provided in EMC 18.36.060(C).

~~1. Final plat approval in the case of subdivisions and short subdivisions; or~~

~~2. In all other cases, be prior to the issuance of any building permits.~~

C. The deferral of transportation impact fees shall be allowed only for single-family attached and detached construction being constructed by an applicant having a contractor registration number or other unique identification number and in accordance with the following:

1. For this subsection:

(a) "Applicant" includes an entity that controls, is controlled by, or is under common control with the applicant.

(b) "Common control" means two or more entities controlled by the same person or entity.

(c) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.

2. An applicant wishing to defer the payment of transportation impact fees shall:

(a) Submit a signed and notarized deferred fee application and completed lien form concurrent with the building permit application for the building subject to the fee; and

(b) Submit a certification that the applicant has requested no more than a total of twenty deferred impact fee requests in the calendar year within the city; and

(c) Pay a non-refundable \$250.00 administration fee for each unit or lot of a single development project for which the deferral of the fee is requested.

3. The lien shall:

(a) Be in a form approved and provided by the city;

(b) Be signed by all owners of the property, with all signatures acknowledged as required for a deed;

(c) Include the legal description, property tax account number, and address for each lot or unit the lien will encumber;

(d) Be binding and subordinate on all successors in title after the recording;

(e) Be junior and subordinate to a first mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees, but in no case shall the lien be in less than second place.

4. The lien shall be recorded by the applicant, at their own expense, and a conformed copy of the recorded document shall be provided to the city prior to the issuance of the building permit that is subject to the transportation impact fee.



5. Each applicant eligible to defer impact fees shall only be entitled to annually receive deferrals for no more than a total of twenty building permits within the city.
6. The applicant shall be responsible for the payment of all recording fees.
7. The deferred transportation impact fee shall be paid in full prior to whichever of the following occurs first:
  - (a) The closing of the first sale of the property occurring after the issuance of the applicable building permit for which the fees were deferred; or
  - (b) Eighteen months from the date of building permit issuance.
8. If the building for which the deferral of the transportation impact fee is requested is located within a subdivision, unit lot subdivision or short subdivision, the subdivision, unit lot subdivision or short subdivision shall be recorded prior to recording the lien for impact fees and issuance of the building permit.
9. After the applicant has paid all deferred transportation impact fees, the applicant is responsible for submitting a lien release application to the city. The applicant, at their own expense, will be responsible for recording lien releases.
10. Compliance with the requirements of the deferral option shall constitute compliance with subdivision or short subdivision conditions pertaining to the timing of the transportation impact fee payment.
11. If deferred transportation impact fees are not paid in accordance with terms authorized by state law and this section, the City may initiate foreclosure proceedings for the unpaid transportation impact fees and all costs associated with the collection of the unpaid transportation impact fees.
12. A request to defer transportation impact fees under this section may be combined in one application with a request to defer school impact fees under EMC 18.44.090.

**GD.** All fees collected under this chapter shall be obligated or expended on public facilities that are addressed by an adopted capital facilities plan element of a comprehensive land use plan. If fees are earmarked for a specific project, and the city determines that it is not feasible to implement that project within six years (or such other time period established pursuant to RCW 82.02.070(3) on public facilities intended to benefit the development activity for which the impact fees were paid), the fees may be expended or encumbered on a replacement project that provides similar or greater improvement to the transportation system.

**DE.** The city engineer or designee shall be the official responsible for preparing the annual reports required under RCW 82.02.070.

**EF.** An applicant's commitment to specific performance to construct a transportation improvement, including any bonds or financial assurance associated with the improvement, shall not be considered a fee under this chapter, regardless of whether a monetary value has been assigned to the improvement in the traffic analysis or other project review documents or agreements.

**FG.** An applicant may appeal the city traffic engineer's determination of the impact fee required under this chapter by following the administrative appeal procedures for the underlying development approval. If there are no administrative appeal procedures for the underlying development approval, the appeal shall follow the administrative appeal procedures in Section 15.20.010 for the appeal of minor administration decisions.

**Section 3.** Section 18.36.065, "Fee Exemptions" is added to the Everett Municipal Code for Small Project Impact Fees as follows:



prepared by a licensed professional engineer or transportation planner with standing in the Institute of Transportation Engineers or is acceptable to the city traffic engineer.

**Section 5.** Section 14 of Ordinance No. 3387-14, as amended (EMC 18.40.140), regarding "Procedure for payment and use of fees" for Transportation Mitigation, which reads as follows:

- A. Payment of all fees shall be made prior to:
  - 1. Final plat approval in the case of subdivisions and short subdivisions; or
  - 2. In all other cases, be prior to the issuance of any building permits.
- B. All fees collected under this chapter shall be obligated or expended on transportation improvements. Fees collected for specific projects shall be expended on those projects or may be expended on replacement projects that provide similar or greater improvements.
- C. The fees shall be obligated or expended in all cases within five years of collection. Any fees not so obligated or expended shall be refunded with interest at the rate applied to judgments to the property owners of record at the time of refund; however, if the payment is not obligated or expended within five years due to delay attributable to the project applicant, the payment shall be refunded without interest.
- D. An applicant's commitment to specific performance to construct a transportation improvement, including any bonds or financial assurance associated with the improvement, shall not be considered a fee, regardless of whether a monetary value has been assigned to the improvements in the traffic analysis or other project review documents or agreements.

**Is hereby amended to read as follows:**

- A. Payment of all transportation fees shall be made prior to building permit issuance, except as provided in EMC 18.40.140(B).:
  - ~~1. Final plat approval in the case of subdivisions and short subdivisions; or~~
  - ~~2. In all other cases, be prior to the issuance of any building permits.~~
- B. The deferral of transportation fees shall be allowed only for single-family attached and detached construction being constructed by an applicant having a contractor registration number or other unique identification number and in accordance with the following:
  - 1. For this subsection:
    - (a) "Applicant" includes an entity that controls, is controlled by, or is under common control with the applicant.
    - (b) "Common control" means two or more entities controlled by the same person or entity.
    - (c) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.
  - 2. An applicant wishing to defer the payment of fees for transportation system improvements shall:
    - (a) Submit a signed and notarized deferred fee application and completed lien form concurrent with the building permit application for the building subject to the fee; and
    - (b) Submit a certification that the applicant has requested no more than a total of twenty deferred transportation system improvement fee requests in the calendar year within the city; and



A. The city may, on a case-by-case basis, grant exemptions to the application of the transportation impact fee for new low income housing units in accordance with the conditions specified under RCW 82.02.060(2). To qualify for the exemption, the developer shall submit an application to the planning and community development director for consideration by the city prior to application for building permit. Conditions for such approvals shall meet the requirements of RCW 82.02.060(2), which includes payment of the fee from public funds other than the fee for transportation improvement account. In addition, any approved exemption will require a covenant that will assure the project's continued use for low income housing. The covenant shall be an obligation that runs with the land upon which the housing is located, and shall be recorded against the title of the real property.

B. The city may, on a case-by-case basis, grant a partial exemption of not more than eighty percent of transportation impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds, for low-income housing units, pursuant to the following:

1. The Mayor, or designee, may grant an exemption to a low-income housing project for each low-income unit.
2. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the transportation impact fees, the impacts of the project on public facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.
3. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable transportation impact fees in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Snohomish County Auditor.
4. For purposes of this section, low-income housing is defined as any housing with a monthly housing expense, that is no greater than thirty percent of fifty percent of the median family income adjusted for family size, for Everett, as reported by the United States Department of Housing and Urban Development.

**Section 4.** Section 4 of Ordinance No. 3387-14, as amended (EMC 18.40.040), regarding "When a traffic analysis is required" for Transportation Mitigation, which reads as follows:

The applicant shall provide the responsible official with a written traffic analysis as part of the city's project review process, which includes SEPA review, whenever a proposed project will generate fifty or more additional peak hour trips, or if deemed necessary by the city traffic engineer. The traffic analysis shall be paid for by the applicant and shall be prepared by a licensed professional engineer or transportation planner with standing in the Institute of Transportation Engineers or is acceptable to the city traffic engineer.

**Is hereby amended to read as follows:**

The applicant shall provide the city traffic engineer ~~responsible official~~ with a written traffic analysis as part of the city's project review process, ~~which includes SEPA review,~~ whenever a proposed project will generate fifty or more additional peak hour trips, or if deemed necessary by the city traffic engineer. The traffic analysis shall be paid for by the applicant and shall be



- (c) Pay a non-refundable \$250.00 administration fee for each unit or lot of a single development project for which the deferral of the fee is requested.
3. The lien shall:
- (a) Be in a form approved and provided by the city;
  - (b) Be signed by all owners of the property, with all signatures acknowledged as required for a deed;
  - (c) Include the legal description, property tax account number, and address for each lot or unit the lien will encumber;
  - (d) Be binding and subordinate on all successors in title after the recording;
  - (e) Be junior and subordinate to a first mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees, but in no case shall the lien be in less than second place;
4. The lien shall be recorded by the applicant, at their own expense, and a conformed copy of the recorded document shall be provided to the city prior to the issuance of the building permit that is subject to the fee for transportation improvements.
5. Each applicant eligible to defer transportation fees shall only be entitled to annually receive deferrals for no more than a total of twenty building permits within the city.
6. The applicant shall be responsible for the payment of all recording fees.
7. The deferred fee for transportation improvements shall be paid in full prior to whichever of the following occurs first:
- (a) The closing of the first sale of the property occurring after the issuance of the applicable building permit for which the fees were deferred; or
  - (b) Eighteen months from the date of building permit issuance.
8. If the building for which the deferral of the fee for transportation improvements is requested is located within a subdivision, unit lot subdivision or short subdivision, the subdivision, unit lot subdivision or short subdivision shall be recorded prior to recording the lien for fees and issuance of the building permit.
9. After the applicant has paid all deferred fees for transportation improvements, the applicant is responsible for submitting a lien release application to the city. The applicant, at their own expense, will be responsible for recording lien releases.
10. Compliance with the requirements of the deferral option shall constitute compliance with subdivision or short subdivision conditions pertaining to the timing of the fee payment.
11. If deferred fees for transportation improvements are not paid in accordance with terms authorized by state law and this section, the City may initiate foreclosure proceedings for the unpaid impact fees and all costs associated with the collection of the unpaid fees.
12. A request to defer transportation fees under this section may be combined in one application with a request to defer school impact fees under EMC 18.44.090.

**BC.** All fees collected under this chapter shall be obligated or expended on transportation improvements. Fees collected for specific projects shall be expended on those projects or may be expended on replacement projects that provide similar or greater improvements.

**CD.** The fees shall be obligated or expended in all cases within five years of collection. Any fees not so obligated or expended shall be refunded with interest at the rate applied to judgments to the property owners of record at the time of refund; however, if the payment is not obligated or expended within five years due to delay attributable to the project applicant, the payment shall be refunded without interest.

**DE.** An applicant's commitment to specific performance to construct a transportation improvement, including any bonds or financial assurance associated with the improvement, shall



not be considered a fee, regardless of whether a monetary value has been assigned to the improvements in the traffic analysis or other project review documents or agreements.

**Section 6.** Section 18.40.145, "Fee Exemptions" is added to the Everett Municipal Code for Transportation Mitigation as follows:

A. The city may, on a case-by-case basis, grant exemptions to the application of the fee for transportation improvements for new low income housing units in accordance with the conditions specified under RCW 82.02.060(2). To qualify for the exemption, the developer shall submit an application to the planning and community development director for consideration by the city prior to application for building permit. Conditions for such approvals shall meet the requirements of RCW 82.02.060(2), which includes payment of the fee from public funds other than the fee for transportation improvement account. In addition, any approved exemption will require a covenant that will assure the project's continued use for low income housing. The covenant shall be an obligation that runs with the land upon which the housing is located, and shall be recorded against the title of the real property.

B. The city may, on a case-by-case basis, grant a partial exemption of not more than eighty percent of fees for transportation improvements, with no explicit requirement to pay the exempted portion of the fee from public funds, for low-income housing units, pursuant to the following:

1. The Mayor, or designee, may grant an exemption to a low-income housing project for each low-income unit.
2. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the impact fees, the impacts of the project on public facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.
3. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable fees for transportation improvements in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Snohomish County Auditor.
4. For purposes of this section, low-income housing is defined as any housing with a monthly housing expense, that is no greater than thirty percent of fifty percent of the median family income adjusted for family size, for Everett, as reported by the United States Department of Housing and Urban Development.

**Section 7.** Section 6 of Ordinance No. 3396, as amended (EMC 18.44.060), regarding "Impact fee schedule--Exemptions" for School District Impact Fees, which reads as follows:

The city council may, on a case-by-case basis, grant exemptions to the application of the fee schedule for low income housing in accordance with the conditions specified under RCW 82.02.060(2). To qualify for the exemption, the developer shall submit a petition to the planning and community development director for consideration by the council prior to application for building permit. Conditions for such approvals shall meet the requirements of RCW 82.02.060(2) and include a requirement for a covenant to assure the project's continued use for low income



housing. The covenant shall be an obligation that runs with the land upon which the housing is located, and shall be recorded against the title of the real property.

**Is hereby amended to read as follows:**

A. The city council may, on a case-by-case basis, grant exemptions to the application of the fee schedule for low income housing in accordance with the conditions specified under RCW 82.02.060(2). To qualify for the exemption, the developer shall submit a petition to the planning and community development director for consideration by the council prior to application for building permit. Conditions for such approvals shall meet the requirements of RCW 82.02.060(2) and include a requirement for a covenant to assure the project's continued use for low income housing. The covenant shall be an obligation that runs with the land upon which the housing is located, and shall be recorded against the title of the real property.

B. The city may, on a case-by-case basis, grant a partial exemption of not more than eighty percent of school impact fees, with no explicit requirement to pay the exempted portion of the fee from public funds, for low-income housing units, pursuant to the following:

1. The Mayor, or designee, after approval by the applicable school district, may grant an exemption to a low-income housing project for each low-income unit.
2. The decision to grant, partially grant or deny an exemption shall be based on the public benefit of the specific project, the extent to which the applicant has sought other funding sources, the financial hardship to the project of paying the impact fees, the impacts of the project on school facilities and services, and the consistency of the project with adopted city plans and policies relating to low-income housing.
3. An exemption granted under this subsection must be conditioned upon requiring the developer to record a covenant approved by the director of planning and community development that prohibits using the property for any purpose other than for low-income housing. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing, and require that, if the property is converted to a use other than for low-income housing as defined in the covenant, the property owner must pay the applicable impact fees in effect at the time of any conversion. Covenants required by this subsection must be recorded with the Snohomish County Auditor.
4. For purposes of this section, low-income housing is defined as any housing with a monthly housing expense that is no greater than thirty percent of fifty percent of the median family income adjusted for family size, for Everett, as reported by the United States Department of Housing and Urban Development.

**Section 8.** Section 9 of Ordinance No. 3396, as amended (EMC 18.44.090), regarding "Collection and transfer of fees" for School District Impact Fees, which reads as follows:

A. School impact fees shall be due and payable to the city by the developer at the time of issuance of residential building permits for all developments. The city may make alternative arrangements with a school district for collection of impact fees, provided payment is made prior to the issuance of residential building permits for all developments.

B. Districts eligible to receive school impact fees required by this chapter shall establish an interest-bearing account and method of accounting for the receipt and expenditure of all impact fees collected under this chapter. The school impact fees shall be deposited in the appropriate district account within ten days after receipt, and the receiving school district shall provide the city with a notice of deposit.



C. Each district shall institute a procedure for the disposition of impact fees and providing for annual reporting to the city that demonstrates compliance with the requirements of RCW 82.02.070, and other applicable laws.

**Is hereby amended to read as follows:**

A. School impact fees shall be due and payable to the city by the developer at the time of issuance of residential building permits for all developments, except as provided in EMC 18.44.090(B). The city may make alternative arrangements with a school district for collection of impact fees, provided payment is made prior to the issuance of residential building permits for all developments.

B. The deferral of school impact fees shall be allowed only for single-family attached and detached construction being constructed by an applicant having a contractor registration number or other unique identification number and in accordance with the following:

1. For this subsection:

(a) "Applicant" includes an entity that controls, is controlled by, or is under common control with the applicant.

(b) "Common control" means two or more entities controlled by the same person or entity.

(c) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.

2. An applicant wishing to defer the payment of school impact fees shall:

(a) Submit a signed and notarized deferred fee application and completed lien form concurrent with the building permit application for the building subject to the fee; and

(b) Submit a certification that the applicant has requested no more than a total of twenty deferred impact fee requests in the calendar year within the city; and

(c) Pay a non-refundable \$250.00 administration fee for each unit or lot of a single development project for which the deferral of the fee is requested.

3. The lien shall:

(a) Be in a form approved and provided by the city;

(b) Be signed by all owners of the property, with all signatures acknowledged as required for a deed;

(c) Include the legal description, property tax account number, and address for each lot or unit the lien will encumber;

(d) Be binding and subordinate on all successors in title after the recording;

(e) Be junior and subordinate to a first mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees, but in no case shall the lien be in less than second place;

4. The lien shall be recorded by the applicant, at their own expense, and a conformed copy of the recorded document shall be provided to the city prior to the issuance of the building permit that is subject to the impact fee.

5. Each applicant eligible to defer impact fees shall only be entitled to annually receive deferrals for no more than a total of twenty building permits within the city.

6. The applicant shall be responsible for the payment of all recording fees.

7. The deferred impact fee shall be paid in full prior to whichever of the following occurs first:

(a) The closing of the first sale of the property occurring after the issuance of the applicable building permit for which the fees were deferred; or

(b) Eighteen months from the date of building permit issuance.

8. If the building for which the deferral of the impact fee is requested is located within a subdivision, unit lot subdivision or short subdivision, the subdivision, unit lot subdivision or



short subdivision shall be recorded prior to recording the lien for impact fees and issuance of the building permit.

9. After the applicant has paid all deferred impact fees, the applicant is responsible for submitting a lien release application to the city. The applicant, at their own expense, will be responsible for recording lien releases.
10. Compliance with the requirements of the deferral option shall constitute compliance with subdivision or short subdivision conditions pertaining to the timing of the impact fee payment.
11. If deferred impact fees are not paid in accordance with terms authorized by state law and this section, the City may initiate foreclosure proceedings for the unpaid impact fees and all costs associated with the collection of the unpaid impact fees.
12. If the city does not institute foreclosure proceedings for unpaid school impact fees within forty-five days after receiving notice from a school district requesting that it do so, the district may institute foreclosure proceedings with respect to the unpaid impact fees.
13. A request to defer school impact fees under this section may be combined in one application with a request to defer transportation impact fees under EMC 18.36.060 or transportation fees under EMC 18.40.140.

**BC.** Districts eligible to receive school impact fees required by this chapter shall establish an interest-bearing account and method of accounting for the receipt and expenditure of all impact fees collected under this chapter. The school impact fees shall be deposited in the appropriate district account within ten days after receipt, and the receiving school district shall provide the city with a notice of deposit.

**CD.** Each district shall institute a procedure for the disposition of impact fees and providing for annual reporting to the city that demonstrates compliance with the requirements of RCW 82.02.070, and other applicable laws.

**Section 9.** Severability. Should any section, paragraph, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulations, this shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

**Section 10.** Conflict. In the event there is a conflict between the provisions of this Ordinance and any other City ordinance, the provisions of this Ordinance shall control.

**Section 11.** Corrections. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection number and any references thereto.

**Section 12.** General Duty. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on



the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

\_\_\_\_\_  
Ray Stephanson, **Mayor**

**ATTEST:** \_\_\_\_\_  
**CITY CLERK**

**Passed:** \_\_\_\_\_

**Valid:** \_\_\_\_\_

**Published:** \_\_\_\_\_

**Effective Date:** \_\_\_\_\_





## STAFF REPORT

<b>Agenda Subject:</b> Impact Fee Deferral and Exemptions	<b>Report Date:</b> 6/14/2016
<b>Project #:</b> REVV16-002	<b>Meeting/Hearing Date:</b> 6/21/2016
<b>Staff Contact:</b> David Stalheim	<b>Decision (Advisory) Body:</b> Planning Commission
<b>Attachments:</b> Resolution Impact Fees Handout	
<b>Recommendation:</b> Approval of Resolution	

## BACKGROUND SUMMARY

<b>APPLICANT:</b>	City of Everett
<b>REQUEST:</b>	<p>This is an application to amend the following chapters of the Everett Municipal Code:</p> <ul style="list-style-type: none"><li>• Chapter 18.36, Small Project Impact Fee</li><li>• Chapter 18.40, Transportation Mitigation</li><li>• Chapter 18.44, School District Impact Fees</li></ul> <p>The amendments would address requirements set forth by the 2015 state legislature in ESB 5923 regarding a fee deferral system for new single-family detached and attached residential construction.</p> <p>The amendments would also address an option to exempt up to 80% of impact fees for low-income housing.</p>
<b>LOCATION:</b>	City-wide
<b>EXISTING USE:</b>	This proposal affects all land uses in the city.
<b>COMPREHENSIVE PLAN DESIGNATION:</b>	This proposal affects all comprehensive plan designations in the city.
<b>SHORELINE DESIGNATION:</b>	Not applicable
<b>ZONING DESIGNATION:</b>	This proposal affects all comprehensive plan designations in the city.
<b>SEPA STATUS:</b>	This proposal is exempt from SEPA pursuant to WAC 197-11-800(19).

## PROPOSAL DETAILS

<b>FURTHER DESCRIPTION OF PROPOSAL:</b>	<p><b>Single-Family Impact Fee Deferral:</b></p> <p>The proposal to address ESB 5923 (single-family impact fee deferral). The proposal was modified from the initial draft presented to the Planning Commission at the May 17<sup>th</sup> workshop. The modifications include:</p>
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	<ul style="list-style-type: none"><li>• Removal of the requirement to make payment at time of final inspection or certificate of occupancy. Payment under the proposed ordinance is based on closing of the first sale of the property or 18 months from the issues of the building permit, whichever comes first.</li><li>• Adding a certification that the applicant has not requested more than 20 deferrals in one year, consistent with Snohomish County's amendment.</li></ul> <p>The City is also proposing a \$250 administrative fee (each unit) for the deferral.</p> <p><b><u>Low-income Housing 80% Exemption:</u></b></p> <p>The proposal includes an exemption from impact fees for low-income housing. The proposal includes:</p> <ul style="list-style-type: none"><li>• Exempt 80% of impact fees for low-income housing.</li><li>• The 100% exemption would still be allowed for low-income housing, but backfilling the funds exempted would be required.</li><li>• Low-income housing, for this purpose, defined as housing provided to those households earning 50% of area median income (AMI) or less. (A two-person household would have to earn \$36,150 or less, and rents would have to be no more than \$791 for a studio or \$847 for a 1-bedroom, based on 2016 income and rent limits.)</li><li>• Decision to approve exemption based on demonstrated financial need and community benefit.</li><li>• Exemption approval is an administrative decision (Mayor or designee).</li><li>• School district exemptions would require approval by the school district.</li><li>• Any exemption approved would require recording of a low-income housing covenant to ensure ongoing compliance.</li></ul>
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#### PUBLIC COMMENT

PUBLIC/AGENCY NOTICE:	Notice was provided to interested parties, including the builder association, school districts, affordable housing developers, neighborhoods and Snohomish County.
COMMENT LETTERS:	No comments have been received at the time of writing this report
KEY ISSUES SUMMARY:	None
STAFF RESPONSE:	n/a

#### DECISION CRITERIA

SOURCE:	Chapter 82.02 RCW authorizes cities that plan under the Growth Management Act (GMA) to impose impact fees on development activity.
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	<p>Impact fees in Everett are collected for public streets and roads (Chapters 18.36 and 18.40), and for school facilities (Chapter 18.44).</p>
CRITERION:	<p><u>Impact Fee Deferrals:</u> Section 82.02.050(3)(a)(i) requires the city to adopt and maintain a system for the deferred collection of impact fees for single-family detached and attached residential construction by September 1, 2016.</p> <p>The deferral system offered by the City must include <u>one or more</u> of the following <u>options</u> for when payment would be due:</p> <ol style="list-style-type: none"><li>1. Final inspection;</li><li>2. Issuance of the certificate of occupancy or equivalent certification; and/or</li><li>3. The closing of the first sale of the property.</li></ol> <p>Deferral of these fees is for 18 months from issuance of the building permit and can be limited to the first 20 single-family homes. Any deferral must grant and record a lien against the property in favor of the City. The City may collect a reasonable administrative fee from the applicant seeking the deferral.</p> <p><u>Impact Fee Exemption:</u> Section 82.02.060(3) authorizes the city to provide an exemption of not more than eighty percent of impact fees for low-income housing with no explicit requirement to pay the exempted portion of the fee from public funds.</p> <p>An exemption under this provision requires it to be conditioned to require the developer to record a covenant that prohibits use of the property for any purpose other than for low-income housing. The covenant must address price restrictions and household income, and that if the property is converted to a use other than for low-income housing, the property owner must pay applicable impact fees in effect at the time of conversion.</p> <p>A school district who receives school impact fees must approve any exemption under this section.</p>

## EXISTING PLAN REVIEW

<p>GROWTH MANAGEMENT ACT:</p>	<p>The Growth Management Act includes goals and requirements that address housing, public facilities and services.</p> <p><b><u>GMA Planning Goals:</u></b></p> <p>(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.</p> <p>(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.</p> <p><b><u>GMA Requirements:</u></b></p> <p>"A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth;... (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community."</p> <p>36.70A.070(2)</p> <p>"A capital facilities plan element consisting of: ...(d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs..."</p> <p>36.70A.070(3)</p> <p>"...local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan..."</p> <p>36.70A.070(6)(b)</p>
<p>COMPREHENSIVE PLAN:</p>	<p><b><u>Housing Element:</u></b></p> <p><b>Policy 4.3.1</b> Consider providing additional incentives to housing developers and homebuilders in return for providing housing that is affordable to lower and moderate income households.</p> <p><b>Policy 4.3.2</b> Consider inclusionary housing measures, as appropriate, along with affordable housing incentives as necessary to promote affordable housing in the Everett Planning Area.</p> <p><b>Policy 4.3.7</b> Consider a variety of infrastructure funding alternatives</p>



	<p>in order to identify measures that minimize the costs of housing production and increase housing opportunities for low to moderate income households.</p> <p><b>Policy 4.8.2</b> Continue to make use of available public and private resources to subsidize housing costs for low income households and special needs populations within the Everett Planning Area, within the financial capabilities of the city.</p> <p><b>Policy 4.8.6</b> Review existing programs and/or establish new programs for assisting low income households and special needs populations to afford safe and decent housing, within the financial capabilities of the city.</p> <p><b>Implementation Measure A.7.</b> Reduce the use of impact fees for projects providing affordable housing or, within the financial capability of the City, subsidize impact mitigation fees for construction of low and moderate income housing units.</p> <p><b>Transportation Element:</b>  “A key GMA planning requirement is the concept of fiscal restraint in transportation planning....The Transportation Element proposes \$425-456 million in transportation investments over the next 20 years....The revenue sources assumed by the City include outside sources (e.g., WSDOT funding) and grants, and City sources, including general city funds, impact fees, transit fares, and gas tax receipts. If Everett were able to maintain this level of revenue, the City could afford around \$360 million in transportation projects over the next 20 years, which is less than the total project costs identified.”</p>
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## DISCUSSION

CONSISTENCY WITH PLANS:	<p>The proposal for impact fee deferral and exemptions appears to be consistent with the city’s comprehensive plan. In fact, multiple policies in the housing element address incentives, subsidies, new programs and reduction of impact fees.</p> <p>The transportation element addresses the fiscal reality that the element identifies more needs than funding being available. The exemption of impact fees for low-income housing would increase that gap, rather than narrow it. This does not create a consistency issue since there already is a gap, but the exemption has the potential to add to that gap.</p> <p>The single-family deferral proposal does not raise any consistency issues.</p>
IMPACTS AND CONSIDERATIONS OF PROPOSAL:	<p><b>Low-income Housing Exemption:</b>  The exemption of impact fees raises concerns for lost revenue necessary to address capital needs of our transportation system and schools. This becomes a balancing question with the need for affordable housing for very low-income populations.</p>

	<p>The proposal, as drafted, does not grant an automatic impact fee exemption, and the exemption is constrained to lower income groups (50% AMI or below) than what is allowed under state law (80% AMI or below). Each exemption will need to demonstrate the financial need and community benefit. The decision to grant the exemption rests with the Mayor or designee, with school district approval required for a school district exemption.</p> <p>For school districts, at the current time there is not an impact fee charged for studio and 1-bedroom units in multi-family projects. Many very low-income housing projects will include that size unit, resulting in no impact to school district funds. However, it is possible that 2+ bedroom units targeting that income group could be proposed. School districts would have to weigh the financial need and community benefit as part of their decision making process.</p> <p><b><u>Timing of Fee Payment:</u></b></p> <p>Allowing the fee to be paid after the building permit process has been concluded introduces some risks to the city and schools for collection of the fees. If the building is not sold after it is completed, the city would trigger payment at 18 months from issuance of the building permit. If the fees are not paid, the only enforcement option the city will have is to send the matter to collections or foreclosure proceedings.</p>
ALTERNATIVES AND OPTIONS (TO) CONSIDER(ED):	<p>Alternatives to consider could include:</p> <ol style="list-style-type: none"><li><b><u>Scope of Impact Fee Deferral:</u></b> At the Planning Commission workshop, members asked whether consideration was given to expanding the deferral option to include more single-family units (&gt;20 units), multifamily housing, commercial and industrial development.</li><p>The proposal was drafted to comply with state legislation and to meet the September 1<sup>st</sup> deadline. Expansion of the program has not been requested from anyone at the time, but consideration might be given to targeting certain areas or development to meet other community objectives.</p><li><b><u>Impact Fee Exemption Proposal:</u></b> The impact fee exemption for affordable housing is not a mandate and could be rejected. During the initial drafting of this exemption, staff did provide the school districts with an opportunity to comment. While comments on the final ordinance have not been received, little has changed from the original proposal and school objections may still be raised. Their concerns expressed in early May was the cost of providing additional classrooms is real and immediate and impact fees cover a small portion of the costs.</li></ol>



	<p>School impact fees are currently not charged for studio and 1-bedroom units, which could be the majority of low-income units at 50% AMI or below. However, there is also a need for 2- and 3-bedroom family units at this income level, which would be subject to the impact fee. Providing stable, affordable housing for low-income families with children should be a shared goal of the city and school districts. Any approval of a school impact fee exemption cannot occur without first being approved by the school district. The proposed ordinance provides low-income housing developers with the opportunity to make that request.</p> <p>3. <u>Administrative Fees:</u> The proposal, as originally drafted, is not clear on whether the \$250 per lot administrative fee would be charged for both the school deferral and the transportation deferral, assuming that a builder would apply for both. Alternative language is provided in the recommendation.</p> <p>At the Planning Commission workshop, members also asked whether the fees were necessary to cover costs. Follow up took place with building and public works staff, and they confirmed that the fees were necessary to cover costs, including intake of the application, data entry, monitoring and enforcement.</p> <p>4. <u>Timing for Collection:</u> The city could consider going back to collecting the deferred impact fees at the first action, whether that is final building permit, certificate of occupancy, sale of the property, or 18 months from issuance of the building permit.</p>
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**RECOMMENDED ACTION/MOTION:**

Adopt Resolution No. 16.0\_, including Exhibit A which includes the following changes to the ordinance circulated for public review:

For each chapter, add a clause as follows:

"A request to defer [insert fee name from each chapter] under this section may be combined in one application with a request to defer [insert other fee names and references]."



335 116th Avenue SE | Bellevue, Washington 98004  
t: 425.451.7920 f: 425.646.5985 | masterbuildersinfo.com

June 16, 2016

City of Everett Planning Commission

Re: Draft Impact Fee Deferral

Dear Commissioners,

On behalf of the Master Builders Association of King and Snohomish Counties and its 2,800 members, I am writing to address the terms proposed around Impact Fee Deferrals for new single-family detached and attached residential construction.

The proposed changes to defer collection of impact fees from application to "First Action" whichever of the following is first to occur: 18 months from permit issue, closing first sale of property, final inspection or certificate of occupancy, allows for deferral to completion of the project.

Under the proposed language, upon filing for deferred payment of impact fees, a \$250 administrative will be collected per unit, the associated fee for filing a lien on the property is approximately \$75 and \$50 for a lien release. As an example, approximately \$400 in administrative fees will be collected to defer a \$2400 Traffic Impact Fee. Although it isn't clear, a similar cost could also be duplicated for School Impact Fees depending on your decision. These costs will disincentivize use of the Impact Fee Deferral program.

We encourage you to consider an alternative in which Impact Fee Deferrals are processed on a project basis rather than per unit, and where School and Traffic Impact Fees are processed collectively with one fee, rather than a fee for each.

In the current economy, the recommendations outlined below will further the city's goal to encourage economic development while also keeping housing affordable. Please consider the following during your deliberations:

- one \$250 administrative fee per project
- processing deferral of both School and Traffic Impact Fees collectively, with assessing one fee for both
- increase or remove all together the maximum of 20 deferrals per developer or builder per annual cycle
- extend the Impact Fee Deferral program to multifamily development within a defined zone



The MBA appreciates this opportunity to comment on the proposed impact fee ordinances and thanks each of you for your efforts, analysis and careful consideration.

Please do not hesitate to contact me with any questions at (425) 460-8204 or [asievers@mbaks.com](mailto:asievers@mbaks.com).

Sincerely,

A handwritten signature in black ink, reading "Angie Sievers". The signature is fluid and cursive, with a long horizontal stroke at the end.

Angie Sievers  
Snohomish County External Relations and Government Affairs

CC: David Stalheim, Long Range Planning Manager